

In the Supreme Court of the United States

OCTOBER TERM, 1976

Court, U. S.

FILED

NOV 12 1976

MICHAEL RODAK, JR., CLERK

INTERNATIONAL TERMINAL OPERATING CO., INC., PETITIONER

v.

**CARMELO BLUNDO and DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT
OF LABOR**

**JOHN T. CLARK & SON OF BOSTON, INC. and
AMERICAN MUTUAL LIABILITY INSURANCE CO., PETITIONERS**

v.

**JOHN A. STOCKMAN and DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT
OF LABOR**

**ON PETITIONS FOR WRITS OF CERTIORARI TO
THE UNITED STATES COURTS OF APPEALS FOR
THE SECOND AND FIRST CIRCUITS**

MEMORANDUM FOR THE FEDERAL RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-454

INTERNATIONAL TERMINAL OPERATING CO., INC., PETITIONER

v.

**CARMELO BLUNDO and DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT
OF LABOR**

No. 76-571

**JOHN T. CLARK & SON OF BOSTON, INC. and
AMERICAN MUTUAL LIABILITY INSURANCE CO., PETITIONERS**

v.

**JOHN A. STOCKMAN and DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT
OF LABOR**

***ON PETITIONS FOR WRITS OF CERTIORARI TO
THE UNITED STATES COURTS OF APPEALS FOR
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MEMORANDUM FOR THE FEDERAL RESPONDENT

Each of these cases presents the question whether persons who work in a terminal building with cargo that has been discharged from a vessel are covered by the Longshoremen's and Harbor Workers' Compensation

Act, as amended, 86 Stat. 1251, 33 U.S.C. (Supp. V) 902(3) and 903(a). In No. 76-454 the employee was working as a "checker," a person who breaks the seal on a container of goods, checks the contents against the ship's manifest, and marks each item as "stripped." In No. 76-571 the employee was a "stripper," a person who removes the cargo from a container in preparation for transfer to overland carriage. In each case the court of appeals held that all employees engaged in such employment within the terminal are covered by the Act, whether or not they personally remove the cargo from the vessel and whether or not the cargo reaches its first point of rest before they began working with it.

We have argued that this Court should grant the petition in No. 76-444, *Northeast Marine Terminal Co. v. Caputo*, so that it can resolve the conflict among the circuits concerning the scope of shoreside coverage of the amended Act.¹ The employment activity at issue in *Caputo* was more remote from the unloading of a vessel than was the employment in these two cases. If the Court should grant review in *Caputo* and affirm the judgment in that case, the correctness of the judgments in the instant cases would follow *a fortiori*. If, on the other hand, the Court should conclude that the activity in *Caputo* was not covered by the amended Act, its rationale might well indicate the proper disposition of these two cases and others like them. If it should not, the Court then could grant review in one of these cases to reach the questions presented here.

¹A copy of our memorandum in *Caputo* is being furnished to counsel for the parties in these cases.

We therefore believe that consideration of these petitions should be deferred pending this Court's disposition of *Caputo*.²

Respectfully submitted.

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NOVEMBER 1976.

²If the Court denies review in *Caputo*, then it should deny review in these cases as well. Although there is a square conflict among the circuits concerning coverage of the activity at issue in *Caputo*, there is not yet a conflict in result (although there may be a conflict in rationales) concerning coverage of terminal workers such as "checkers," "stuffers," and "strippers." The Fourth Circuit has divided three-to-three on the question. *I.T.O. Corp. of Baltimore v. Benefits Review Board*, 529 F. 2d 1080, adhered to *en banc*, 75-1051, decided August 26, 1976. *Weyerhaeuser Co. v. Gilmore*, 528 F. 2d 957 (C.A. 9), certiorari denied, October 4, 1976 (No. 75-1620), to which petitioners refer, does not create a conflict concerning coverage of terminal activity. *Gilmore* involved an employment injury on the water and presented no question with respect to the Act's coverage ashore. The Ninth Circuit has not yet spoken on the Act's shoreside coverage; the first case involving such a question to reach that court, *Brady-Hamilton Stevedore Co. v. Herron*, No. 75-1538, was argued on October 13, 1976.